

REMARKS

Claims 1-16 are outstanding. No claims have been canceled or added. Terminal Disclaimers regarding U.S. Patent Nos. 6,607,772 and 6,770,233 are submitted herewith to overcome the double-patenting rejection of Claims 1-7 and 9-16. Reconsideration and allowance of all the claims are respectfully requested.

Non-statutory Double Patenting Rejection

Claims 1-7 and 13-16 were rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over USPN 6,770,233 and USPN 6,607,772. In doing so, Examiner states in the Office Action:

Claims 1-4 and 9-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-25 of U.S. Patent No. 6,770,233. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 6,770,233 teach a contact (ie. a restriction or resistance) to an extrudate applied by air/gas flow inside a tubular containment vessel thereby forming a braided/coil extrudate. Although U.S. Patent No. 6,770,233 does not specifically teach that the contact is made downstream of the point wherein the extrudate exhibits a temperature below its glass transition temperature, it would have been an obvious choice to make it so, if not inherent therein, in order to form the extrudate into a desired shape rather than have the extruded material flow around the flapper.

Claims 1, 2, 4-7, 9-11 and 13-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 14-20 of U.S. Patent No. 6,607,772. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 6,607,772 teach air flow contact (ie. a restriction or resistance) to an extrudate applied by a flapper inside a tubular containment vessel thereby forming a curly / spiral extrudate. Although U.S. Patent No. 6,607,772 does not specifically teach that the contact is made downstream of the point wherein the extrudate exhibits a temperature below its glass transition temperature, it would have been an obvious choice to make it so, if not inherent therein, in order to form the extrudate into a desired shape rather than have the extruded material divided or aerated by the air gas flow.

Examiner also states on the same page:

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Applicant respectfully traverses the provisional rejection of Claims 1-7 and 13-16 under the judicially created doctrine of obviousness-type double patenting. However, Applicant provides herewith the requisite terminal disclaimer(s) to overcome this rejection, as the patents cited by Examiner, USPN 6,770,233 and USPN 6,607,772, are commonly owned with the instant Application. Accordingly, Applicant respectfully requests withdrawal of the provisional rejection of Claims 1-7 and 13-16 under the judicially created doctrine of obviousness-type double patenting.

Claim Rejections – 35 U.S.C. § 102

With regard to Claims 1-6 and 8, the Office Action states:

Claims 1-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Meier-Kaiser (US Pat. 6,680,022). Meier-Kaiser teaches the claimed extrusion process comprising a step of: applying a resistance to an extrudate downstream of the point wherein the extrudate exhibits a temperature below its glass transition temperature in a containment device (Fig. 1). It is inherent that the extrudate is cooled to a point wherein the extrudate exhibits a temperature below its glass transition temperature within the calibration device in order to form the final desired shape of the extrudate because if not so, then that extrudate would tend to flow, to some degree, under its own weight after leaving the calibration device and therefore destroying the purpose of the device.

Meier-Kaiser also teaches that: a tubular containment device (Fig. 1); a resistance, of some degree, provided by a flapper or flexible seal which forms a restriction (Fig. 1, element 7); a vacuum (2:25-35); cooling by convection (ie. cooling gas) (3:40-50); and an axially-aligned containment device (Fig. 1).

Applicant respectfully traverses the rejection of Claims 1-6 and 8. As discussed below, USPN 6,680,022 (“Kaiser”) fails to teach each and every element of the rejected claims.

Such rejection under §102 for anticipation requires that the single reference teach each and every element or step of the rejected claim. *See Atlas Powder v. E.I. DuPont*, 750 F.2d 1569 (224 USPQ 409) (Fed. Cir. 1984); *See also* MPEP § 2131.01 (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference”). Examiner’s rejections under §102 fail to meet this test.

Regarding Claims 1-6 and 8, Kaiser fails to teach the claim limitation of “applying a resistance to the extrudate.” As explained on page 11, lines 1-4 of Applicant’s Specification (with emphasis added): **“This slight resistance applied downstream of the glass transition point causes the extrudate (20) to seek the path of least resistance and begin backing up into the containment tube (30) until forming the coils illustrated [in Figure 3], thereby adapting the circular shape of the containment tube (30).”** Clearly, the term “resistance” in Applicant’s Claims refers to an impeding force that hinders movement of the extrudate through the containment tube. Nowhere does the Kaiser reference disclose such a limitation. In fact, the cited reference teaches the opposite of applying a resistance – Kaiser teaches “pulling” using a drawing device that “creates a tensile force” in a linear extrudate. Kaiser does not disclose Applicant’s required element of “applying a resistance” – i.e. hindering movement; rather, Kaiser teaches that a “drawing device such as a pair of drawing rollers” be used to help pull a linear extrudate through a vacuum housing. *See* Kaiser at column 3, lines 10-14 and 61-67. While the flapper or flexible seal of Kaiser (Figure 1, element 7) may indeed form a restriction as pointed out by Examiner, the overall apparatus and process in Kaiser applies a helping force, not a resisting force, to the extrudate. Thus, the cited reference does not teach each and every claim limitation of Claim 1, nor does the cited reference teach each and every claim element of Claims 2-6 and 8, which depend from and incorporate all limitations of Claim 1. Furthermore:

Regarding Claim 2: Kaiser fails to disclose the Applicant's method of Claim 1 wherein the peripheral containment vessel comprises a tube.

Regarding Claim 3: Kaiser fails to disclose the Applicant's method of Claim 1 wherein the resistance is applied to the extrudate by means of a flapper.

Regarding Claim 4: Kaiser fails to disclose the Applicant's method of Claim 1 wherein the resistance is applied to the extrudate by means of a restriction at at least one point along the peripheral containment vessel.

Regarding Claim 5: Kaiser fails to disclose the Applicant's method of Claim 1 wherein the resistance is applied to the extrudate by introducing a pressurized gas into the peripheral containment vessel.

Regarding Claim 6: Kaiser fails to disclose the Applicant's method of Claim 1 wherein the resistance is applied to the extrudate by a vacuum created within the peripheral containment vessel.

Regarding Claim 8: Kaiser fails to disclose the Applicant's method of Claim 1 wherein the peripheral containment vessel is generally axially oriented in relation to the extrudate.

In view of the above, Applicant respectfully submits that the rejection of Claims 1-6 and 8 has been overcome. Accordingly, it is respectfully requested that Examiner withdraw all Section 102 rejections.

Claim Rejections – 35 U.S.C. § 103

With regard to Claim 7, the Office Action states:

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meier-Kaiser (US Pat. 6,680,022).

Meier-Kaiser teaches the basic claimed process as set forth above. Meier-Kaiser does not teach a plurality of dies and corresponding containment vessels attached to an extruder face. Nonetheless,

Official Notice is given that separating the extrudate (ie. divided flow) into smaller product streams is well known in the art. At the time of invention a person of ordinary skill in the art would have found it obvious to have divided the extrudate flow stream into smaller product stream, as commonly practiced in the art, in the process of Meier-Kaiser, in order to provide increased linear output from a single extruder (ie. economy of scale).

This rejection is respectfully traversed. Kaiser fails to disclose or suggest the invention claimed in Claim 7. Section 706.02(j) of the MPEP states that “[t]o establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.” Furthermore, as stated in Section 706.02(j) of the MPEP, “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.”

As explained above with respect to Claims 1-6 and 8, Kaiser fails to teach the claim limitation of “applying a resistance to the extrudate.” As explained on page 11, lines 1-4 of Applicant’s Specification (with emphasis added): “**This slight resistance** applied downstream of the glass transition point **causes the extrudate (20)** to seek the path of least resistance and **begin backing up into the containment tube (30) until forming the coils illustrated** [in Figure 3], thereby adapting the circular shape of the containment tube (30).” Clearly, the term “resistance” in Applicant’s Claims refers to an impeding force that hinders movement of the extrudate through the containment tube. Nowhere does the Kaiser reference disclose such a limitation. In fact, the cited reference teaches the opposite of applying a resistance – Kaiser teaches “pulling” using a drawing device that “creates a tensile force” in a linear extrudate. Kaiser does not disclose Applicant’s required element of “applying a resistance” – i.e. hindering movement; rather, Kaiser teaches that a “drawing device such as a pair of drawing rollers” be used to help

pull a linear extrudate through a vacuum housing. *See* Kaiser at column 3, lines 10-14 and 61-67. While the flapper or flexible seal of Kaiser (Figure 1, element 7) may indeed form a restriction as pointed out by Examiner, the overall apparatus and process in Kaiser applies a helping force, not a resisting force, to the extrudate. Thus, the cited reference does not teach each and every claim limitation of Claim 1, nor does the cited reference teach each and every claim element of Claims 2-8, which depend from and incorporate all limitations of Claim 1.

Furthermore, regarding Claim 7: Kaiser fails to disclose the Applicant's method of Claim 1 further comprising placing a number of extruder dies and corresponding peripheral containment vessels in series such that an extruder face can be attached to an exit end of the extruder dies. As noted by Examiner, Kaiser does not teach a plurality of dies and corresponding containment vessels attached to an extruder face. Nor does Kaiser suggest such a limitation. There is no mention or suggestion whatsoever in Kaiser of pairing multiple dies with multiple, corresponding containment vessels via an extruder face (as also shown in Applicant's Figure 7).

For the sake of argument, even if it were true that one of ordinary skill in the art would have found it obvious to have divided a simple extrudate flow stream into smaller product streams, the fact remains that it would not have been obvious to apply resistance to each stream of extrudate within its corresponding containment vessel in order to hinder its movement therethrough to produce a spiral puff extrudate. Thus, one skilled in the art would not be motivated by the Kaiser reference to arrive at the claimed invention.

In view of the above, Applicant respectfully submits that the rejection of Claim 7 has been overcome. Accordingly, it is respectfully requested that Examiner withdraw all Section 103 rejections.

CONCLUSION

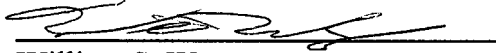
In light of the amendments and the arguments made by Applicant above, Applicant submits that all existing claims are now in a condition for allowance. Applicant respectfully requests that Examiner withdraw all restrictions and rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicant.

If there are any outstanding issues that the Examiner feels may be resolved by way of telephone conference, the Examiner is invited to call Colin Cahoon or William Wang at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, L.L.P. Deposit Account 50-0392.

Respectfully submitted by:

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William S. Wang
Registration No. 52,341
CARSTENS & CAHOON, L.L.P.
P.O. Box 802334
Dallas, TX 75380
(972) 367-2001
(972) 367-2002 Fax